IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6319 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALJI BHIKAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

MT ST Mehta, Addl Govt. Pleader for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/01/2000

ORAL JUDGEMENT

#. Heard Mr.E.E.Saiyed, learned advocate for the petitioner and Mr.S.T.Mehta, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 11-4-1999 passed by

respondent No.2 herein - The District Magistrate, Banaskantha District at Palanpur against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention supplied to the detenu, a copy of which is produced at Annexure B discloses the fact that in all 7 criminal cases were registered against the petitioner at Deodar police station for the offences made punishable under Section 457, 380 read with Section 114 of IPC. It further discloses the fact that on the basis of the material collected by the investigating officer in the said 7 criminal cases registered against the petitioner, the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of the PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended on behalf of the petitioner that before passing the impugned order,the detaining authority has failed to consider the aspect of less drastic remedy like opposing or claiming cancellation of bail and as such, on account of said non application of mind, subjective satisfaction reached by the detaining authority is vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, the impugned order itself discloses that the detenu was released on bail in criminal cases registered against him on 12th January, 1999. However, till the date of passing the impugned order i.e. 11-4-99, no attempt has been made on behalf of the detaining authority or sponsoring authority to

claim cancellation of bail of the petitioner on the apprehension of the repetition of the alleged prejudicial activities. No explanation has been given by the detaining authority either in the order or by filing any affidavit in reply for non consideration of the less drastic remedy. In the facts and circumstances, I am constrained to hold that on account of the non consideration of less drastic remedy, subjective satisfaction of the detaining authority has been vitiated and has rendered the impugned order invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of aforesaid discussion, the petition is allowed. The detention order dated 11-4-1999 passed by respondent No.2 - The District Magistrate, Banaskantha against the petitioner is hereby quashed and set aside. The petitioner Lilaji Bhikhaji Thakore is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 10-1-2000 [A.K.Trivedi, J.]

#kailash#